# Notes from the Consumer Financial Services Committee April 10, 2003

Next Meeting When	Next Meeting Where
Thursday	
April 24	Hudson Cook, LLP
2:00 PM	2361 Rosecrans Ave., Suite 355
Conference Call-In	El Segundo, CA 90245
620-584-8200	Telephone 310-536-9099
PIN 5449#	

#### **★** The CFSC welcomes new member E. Scott Palmer.

We're several months into our revival year, and there has been good progress in recruiting and participation. The March 27th Committee meeting was held at the offices of Hudson Cook, LLP, in El Segundo. Attending in person were Elizabeth Huber and Alicia Tortarolo. Attending by telephone were committee members Roland Reynolds, Nancy Ramirez, Mary Price, and our newest member, Scott Palmer.

*Membership:* The Membership Drive competition is still open. The great prizes should stimulate some referrals. The first place prize is lunch for 2 at the restaurant of your choice (alcohol and transportation not included) and the second place prize is a free copy of the book "Truth in Lending" by Rohner & Miller. The deadline for submission of applications is our next meeting date – April 24th. Successful applicants will start their 3-year terms with the new Bar year in October. If you have not yet acted on this, now is the time!

*Privacy:* Senate Bill 1 has passed the Senate (23 – 6) and has been referred to the Committees on Business & Finance and Judiciary. A review of the current political wrangling at both the state and federal level is reported in a "Privacy Extra" from CCH Financial Privacy Law Guide, copy enclosed. There has been some movement in getting a referendum on privacy going in California if SB 1 fails to pass – a "takin" it to the streets" move to get the issue before the voters. Meanwhile, the California Law Revision Commission has placed the Financial Privacy Study on its June 6 meeting agenda. If any Committee Members are interested in attending, that meeting will be held in Los Angeles. Information is available on the CLRC website: www.clrc.ca.gov.

**Pending Legislation:** The Committee Members discussed several bills at the March 27th meeting. The first group below deals with privacy or identity theft. Some of these are also reported in Bob Mulford's legislative report on "Pending California Legislation of interest to banks, as of April 2, 2003," (copy enclosed). The synopsis on other bills follows.

## Bill No. Synopsis

SB 590 Would prohibit a seller from requesting personal information from a consumer, with certain exceptions; would prohibit a seller from providing any personal information about a consumer to a third party including an affiliated entity,

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except as necessary to effect, administer or enforce a consumer purchase transaction requested or authorized by the consumer.

- AB 7 One-liner that would add a section to the Civil Code that it is the intent of the State Legislature that the California Constitution guarantees all Californians an **inalienable right to privacy**.
- AB 68 Would express findings of the Legislature that every commercial website operator doing business in California has an obligation to maintain the privacy of California residents; would also require **operator who collects personally identifiable information to notify residents of its online privacy policies**.
- SB 12 Would repeal recently enacted laws regulating email solicitations and replace them with new provisions that would instead **prohibit the sending of unsolicited email** advertisements from California or to a California electronic mail address.
- SB 27 With certain exceptions, would require a business that discloses a customer's personal information (including purchase information) to a **third party for direct marketing purposes** to provide the customer, within 30 days of a written request, a written description of the sources and recipients of that information and copies of the information disclosed; provides for civil penalties of up to \$3,000 and attorneys' fee and costs.
- SB 25 Would prohibit any person who uses a consumer credit report and receives notice of a "security alert" in connection with the extension of credit or with the purchase, lease or rental of goods or noncredit related services from extending credit or completing the transaction without taking **reasonable steps to verify the applicant's identity**; would also extend the private sector ban on displaying or posting social security numbers to state and local agencies; would prohibit a person from recording or imbedding a social security number in or on a card or document using a bar code, magnetic strip or other technology.
- AB 1610 Would amend the existing requirement of any person who uses a consumer credit report in connection with the approval of credit and who discovers the address **does not match**, within a reasonable degree of certainty, the address listed on the consumer credit report to apply to "any information, including, but not limited to, the consumer's full name, address, date of birth, social security number, mother's maiden name, home telephone number and business telephone number."

### Other bills discussed at the last CFSC meeting:

- AB 3 Would prohibit a consumer credit reporting agency or user of a consumer credit report from using the **number of inquiries** received within a 30-day period in connection with a consumer's attempt to find a loan or credit in ways that would adversely affect the consumer's credit score; would require inquiries received within a 30-day period to count as a single inquiry; would prohibit inquiries from preapproved offers from being counted; would require the consumer credit reporting agency to remove adverse information within 30 days of a finding that the information is not accurate; would require a lienholder to report lien release within 30 days of satisfaction or resolution.
- AB 964 **Automobile retail installment contracts** to disclose BPA electronic title and registration fee, GAP/debt cancellation fee; lease contracts to disclose BPA fee.

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discretionary finance charge increases that are added to the 'buy rate'" in connection with motor vehicle financing. SB 1022 Would authorize consumers to record their telephone conversations with debt collectors and would require debt collectors to so inform consumers. Other California bills of interest: AB 73 Would prohibit the solicitation for an extension of credit for a consumer loan through the use of an **unsolicited check** sent by a charge card issuer, financial institution, or other lender. Would add provisions for "venture capital company" to the California Finance **AB 88** Lenders Law, but exempt it if it does not make consumer loans or commercial loans under \$5,000. AB 309 Would add to the Cal. Civ. Code Sec. 1632 Spanish-language translation requirement **other languages** if the transaction is negotiated primarily in the other language. SB 584 would require that a person who advertises, promotes or markets a service or product in a language other than English must, upon the request of a consumer, provide rates, terms and conditions for providing the product or service description of services or products, discount programs, and promotions offered with the product or service in that other language. **AB 313** Removes the June 30, 2005, sunset on the California Residential Mortgage Lending Act. AB 485 Amends California's covered loan law with respect to the **financing of credit life**, credit disability, credit unemployment, credit property insurance or debt **cancellation fees** to change prohibition from 30 to 90 days of loan closing. AB 800 **Changes the reporting of credit information** from negative (shall not report inaccurate information) to affirmative (must report only accurate information); reinvestigation obligations of furnishers of credit information to credit reporting agencies set forth in more detail; establishes statutory damages of \$2,500 plus attorney's fees and court costs. AB 832 Would incorporate into the California Finance Lenders Law a requirement that application for credit not be denied based on race, ethnicity, national origin, native language or Zip Code of applicant. Person who contacts consumer by telephone in order to solicit magazine or AB 1078 newspaper subscription must notify consumer in same call the expiration date of current subscription. AB 1175 Credit card issuer is prohibited from sending out unsolicited preprinted **credit** card application that contains personal information about the consumer, such as name and address. AB 1294 Would require **debt collector discontinue collecting debt for 30 days** if debtor gives information relating to alleged status as victim of identity theft. Would require Department of Motor Vehicles to create a **fingerprint** AB 1305 identification system; authorizes increased fees. AB 1498 Would prohibit a California Finance Lender licensee from engaging in fraudulent home mortgage underwriting practices (the bill doesn't define them).

Automobile dealer must **disclose the "buy rate"** and any "additional

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SB 508

AB 1664 Would enact the 'Bank Customer Bill of Rights Act;' would prohibit a bank from selling private credit information about a customer to a marketing business for profit without the customer's consent; would prohibit a bank from charging a customer using the bank's ATM an overdraft penalty of \$30 or more without providing a notice of "cumulative charges;" would prohibit a rate of interest on credit cards over 2% above the prime rate; would prohibit a bank from charging a higher rate of interest if the customer qualifies for a lower rate on a loan and bank has not made customer aware of that fact. AB 1714 Involves certain rights and notices to consumers in connection with **arbitration** agreements. AB 1774 Gives the Department of Financial Institutions ability to conduct **background fingerprint investigation** of principals of different types of financial institutions; makes other changes to the Financial Code. Would require lienholder to cause delivery of certificate of ownership within 10 SB 237 days of satisfaction of lien; would require transfer of certificate of ownership of lease vehicle purchase within 10 days; would adopt statutory damages for failing to release lien or title. SB 455 Adds statutory penalties against equity purchaser in connection with home equity sales contracts for houses in foreclosure. Advertising in other languages – see AB 309. SB 584 SB 602 Adds a **statutory penalty of up to \$100,000** in any suit brought by an individual injured as a result of a business or person failing to notify the individual of a **breach of the security systems** (adopted last year); adds a statutory penalty of \$5,000 for failing to provide copies of records of certain information to person who is victim of identity theft; requires a business entity that receives a change of address request from any individual that has an existing account to send a **change of address notification** to the previous address of record and to the new address. SB 691 Would prohibit an insurer with respect to homeowners' insurance from (1) refusing to underwrite, canceling or refusing to renew risk based insurance on the credit history of an applicant or insured; (2) rating risk based insurance rate on the credit history of the insured or applicant; would also prohibit used of applicant's credit history in a manner that disparately impacts a protected class (does not define (1) creditor, (2) protected class, (3) disparate impact). SB 804 Would increase the statutory exemption of homestead from execution from a base of \$50,000 to a base of \$67,000, family exemption from \$75,000 to \$100,000 and for seniors 65 or older from \$152,000 to \$167,000.

What's Up with Telemarketing? The California Attorney General's website is taking "preregistrations" for the federal Do Not Call Registry:

#### www.caag.state.ca.us/donotcall/index.htm.

In the meantime, the AG's office has published the Notice of Proposed Rulemaking, Initial Statement of Reasons and Proposed Rule (Title 11, Div. 5 Privacy). SB 33 is more or less the conformity bill whereby California's do not call law (Cal. B & P Code §§ 17590 *et seq.*) would be brought into line with the federal law. The bill has been heard in the Senate Committee on

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Business & Professions. AB 88 would add a new section to the Civil Code that would provide any contract with a consumer located in California that is made in connection with a telephone solicitation for the purchase of certain goods or services is unlawful if the telemarketer fails to comply with the provisions of the federal Telemarketing Sales Rule. This bill has passed the Assembly and is in the Committee on Judiciary. SB 320 ("your machine may not speak to my machine without a warm body first making an announcement") has been referred to the Committee on Business & Professions and does not seem to be moving.

*Other Items of Interest:* A brief memo mentioning a case involving the caps on civil liability for individual claims under the Truth in Lending in a non-mortgage setting is enclosed. The "Truth in Lending Subcommittee" to whom the memo is addressed is that of the Consumer Financial Services Committee of the ABA Business Law Section.

A paper by Julie L. Williams, 1st Senior Deputy Comptroller of the Office of the Comptroller of the Currency, entitled "The OCC, the National Bank Charter, & Current Issues Facing the National Banking System" is enclosed.

Also enclosed is a copy of a brief article about a case where the jury awarded a person whose credit report was not corrected when it should have been the compensatory sum of \$197,000 (reduced to \$100,000 by the court).

And, a bit of news about the federal bankruptcy bill is enclosed. On the same page as the information about the status of the federal bankruptcy bill is a "Conference Calendar" that may be of interest.

*Upcoming CFSC Events:* We're in the planning stages for the Identity Theft programs to be offered later this year. Please let your Chair know if you are interested in getting in on this and we'll add you to the conference calls!

In May next year the Business Law Section of The State Bar of California will be holding its Spring Meeting in conjunction with the California Bankers Association. This is an opportunity the CFSC must not miss. We'll have the ability to reach many interested lawyers with programs or a forum on hot consumer financial services issues. Stay tuned!

Please join us in person or by telephone for our April meeting.

Elizabeth A. Huber, Esq. Hudson Cook, LLP 2361 Rosecrans Ave., Suite 355 El Segundo, CA 90245 Telephone 310-536-9099 email: ehuber@hudco.com

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